

Consumer Action

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Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW
Washington DC 20551
Email: regs.comments@federalreserve.gov

March 17, 2009

RE: Regulation E; Docket No. R-1343

Dear Governors of the Federal Reserve System:

Consumer Action¹ appreciates the opportunity to weigh in on your proposed rules to address overdraft loan fees. We are pleased that the Board, in issuing these proposed regulations, recognizes that “courtesy overdraft protection” can be unfair to consumers, that marketing of the service to consumers has been deceptive and that consumers must be allowed to choose whether they want to use this service.

We strongly support your “second alternative” (opt in) to limit the ability of financial institutions to assess overdraft fees for paying ATM withdrawals and one-time debit card transactions that overdraw the consumer’s account, unless the consumer affirmatively consents, or opts in, to the institution's payment of overdrafts for these transactions.

Consumer Action supports this opt in approach but we suggest that this provision should apply to all aspects of automatic overdraft protection—not just ATM and debit card overdrafts, but checks and Point of Sale (POS) transactions, too. Consumers should get overdraft (bounce) protection only if they ask for it and agree to the terms in writing.

We support your proposal that financial institutions should not be allowed to charge an overdraft fee if the overdraft would not have occurred except for a debit hold. A hold on funds is not a consumer transaction, it is a procedure used by banks and merchants to protect themselves, not consumers. Holds should never be treated in the same way as a cleared transaction.

We urge you not to adopt your “first alternative” (“opt out”) to allow financial institutions to assess overdraft fees when consumers merely are notified about the right to opt out but do not act on the opt out. ***Consumer Action believes this is the wrong approach.*** Consumers should not be enrolled in an overdraft loan protection program unless they request to be enrolled or agree in

¹ Consumer Action (www.consumer-action.org) is a non-profit organization founded in San Francisco in 1971. During its more than three decades, Consumer Action has continued to serve consumers nationwide by advancing consumer rights, referring consumers to complaint-handling agencies through our free hotline, publishing educational materials in Chinese, English, Korean, Spanish, Vietnamese and other languages, advocating for consumers in the media and before lawmakers, and comparing prices on credit cards, bank accounts, telephone plans and other consumer goods and services.

writing to accept this option as an account feature. Enrollment should never be automatic when you open a bank account.

We sincerely hope that you will not adopt “opt out” to allow financial institutions to assess overdraft fees just because consumers fail to respond to a notice. There are many reasons consumers miss such notices, but they should not be punished for it. But if you do we suggest, at minimum, that the consumer who does not opt out should be given a second chance to avoid the fee if they inform the bank that for whatever reason they did not see the notice of the right to opt out and therefore did not act on it. In practice, this would mean that the first overdraft fee (or set of fees) would be eliminated upon consumer request to opt out of the program.

In addition, we urge the Board to recognize that fee-based overdraft loans are extensions of credit, and as such, make them subject to the Truth in Lending Act and Regulation Z requirements to disclose the cost in terms of an annual percentage rate.

Because overdrafts are not currently recognized as credit, a loophole has been created giving banks an unfair advantage in the marketing of overdraft loan protection. Currently, banks can make these cash advances to consumers without providing Truth in Lending protections and cost disclosures. We urge you to write strong rules that require the costs of automatic overdraft protection to be disclosed under open-end credit rules. Overdraft loans should be regulated under the Truth in Lending Act with sample APR disclosures. This would give account holders access to information on the comparable cost of credit so that they can make good choices in which financial products to use.

When a consumer has outstanding bounce protection loans, banks can reach in to their accounts and take the money to repay overdraft loans and fees before honoring other scheduled payments and checks. Truth in Lending coverage would prevent this from happening.

We are sure that you realize that low- to moderate-income consumers end up paying the bulk of these fees because they often live paycheck-to-paycheck. Please protect bank consumers from these predatory short-term loans. We urge you instead to guide the banks in creating useful products that help consumers manage their money—not flush it down the drain.

Sincerely,

A handwritten signature in black ink that reads "Linda Sherry". The signature is written in a cursive, flowing style.

Linda Sherry
Director of National Priorities